IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 900 OF 2000
WITH
CRIMINAL APPEAL NO. 901 OF 2000.

Criminal Appeal No. 900 of 2000.

Sanjay Fakira Telore .... Appellant.
(Orig.Accd.No.1)

V/s

The State of Maharashtra .... Respondent.

Mr.Rahul S. Kate, Adv. For the appellant.

Mrs.P.H.Kantharia, APP for the State.

Criminal Appeal No. 901 of 2000.

Smt.Rohini Sanjay Taware .... Appellant.
(Orig.Accd.No.2)

V/s

The State of Maharashtra. .... Respondent.

Mr. M.A. Patil, Adv. (appointed) for the appellant.

Mrs. P.H. Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, JJ.

17.3.2005.

Oral Judgment: (**Per Palshikar, J)**

These two appeals are directed against the judgment and order dated

2.8.2000 passed by the Additional Sessions Judge, Baramati, in Sessions Case No.49/99 convicting the original accused Sanjay and Rohini for the offence punishable under section 302 read with section 34 of Indian Penal Code and sentencing them to suffer imprisonment for life and fine of Rs.1000/- each in default to further suffer rigorous imprisonment for six months each. The appellants in both the appears have filed these appeals.

2. With the assistance of the learned counsel appearing for the appellants and the learned Additional Public Prosecutor for the State we have perused the entire evidence and reappreciated the same both oral and documentary as raised before the Additional Sessions Judge, Baramati..

3. The prosecution story as it emerges from our reappreciation of evidence is that both the accused had illicit relations and were torturing the victim Meena wife of Sanjay for not leaving Sanjay. The prosecution has alleged that on 16.8.1998 when the victim Meena was working in the house the accused persons entered the house, she was beaten and abused and then accused No.2 picked up a stove and sprinkled kerosene on her person and Sanjay set her on fire as a result of which she sustained severe burn injuries and was taken to the hospital by the husband. There P. W. 1-Bhagwan Haribhau Paphale recorded her dying declaration which he proved as Exhibit 21 and is corroborated by P.W. 10-Dr.Sunil Ratan Wadile who noted the case history in his hand. Later on Meena died and the accused persons were arrested and prosecuted. After completion of the investigation they were charged under section 302 read with section 34

of IPC as aforesaid and convicted on the basis of evidence of 10 witnesses to suffer imprisonment as mentioned above. Criminal Appeal No.900/2000 is filed by Sanjay the husband of the victim and Criminal Appeal No.901/2000 is filed by Rohini the co-accused. Since both the appeals involve identical question of fact and law and the evidence also is common the trial being one these appeals are also disposed of by this common order.

4. The conviction basically rests on two dying declarations both recorded by police officials; one is Exhibit 21 and the other is Exhibit 24. Exhibit 21 is proved by P.W. 1-B. H. Paphale police official who recorded it and it is corroborated by P.W. 10-Dr.Sunil R. Wadile who admitted the victim to the hospital and noted her case history. The second dying declaration Exh.24 was recorded by police official P.W. 2-Sambhaji Ramchandra Choudhari and P.W. 11-Dr.Manoj Shankarrao Todkar certified that when Exh.24 was recorded the patient was in conscious state and was in position to depose. P.W. 6-Suman Rangnath Kamble, P.W. 7-Suman Houseram Hole and P.W. 8-Hamid Yasin Mujawar are the witnesses who speak of ill treatment meted out to victim Meena by accused persons. P.W. 9-Dr.Sou Sonali Shashank Pedram conducted the post mortem. It is on appreciation of this evidence that the learned trial Judge came to the conclusion of guilt and convicted the accused persons as aforesaid. Correctness of that judgment is assailed before us in these two appeals. As mentioned above we have reappreciated the entire evidence and in our opinion it is impossible to sustain the order of conviction in view of our observations in reappreciation of evidence. It is admitted position on record that Exh.21 was recorded by P.W. 1- B. H. Paphale prior in point of time than Exh.24

which was recorded by P.W. 2- Sambhaji R. Choudhari yet the prosecution has treated Exh.24 as First Information Report though Exh.21 was already recorded earlier. It therefore raises a question as to whether Exh.24 was executed to overcome the obvious lacunae in the dying declaration so that conviction can be sustained. It is very brief in nature, it is not recorded in a narrative form and therefore necessary ingredients of the dying declaration being admissible and acceptable in evidence are missing. All these lacunae are fulfilled in Exh.24. P.W. 2- Sambhaji R. Choudhari has recorded it. His deposition is at Exh.23. It is at page 83 of record paper book. He has stated that on 17.8.1998 P.S.I. Dabhade of Daund police station directed him to record the statement of an injured in Sassoon Hospital, Pune. The witness then says that accordingly he went to Sassoon hospital and at about 3.30 p.m. On 17.8.1998 recorded the statement of the victim who was in ward No.27. Since there was no Executive Magistrate available he recorded the statement himself in the presence of doctor and then he gives details of the manner in which the dying declaration was recorded. Nowhere in his deposition he has explained why the second declaration was being recorded.

5. It is pertinent to note that both the dying declarations are recorded in Sassoon hospital. Exh.21 was recorded by P.W. 1- B. H. Paphale on 17.8.1998. It bears the certificate of the doctor that the victim was conscious at that time. Yet subsequently the second dying declaration Exh.24 was recorded. A perusal of these dying declarations reveals that Exh.24 is definite improvement on Exh.21. All that has been said in Exch.21 by the victim is that around 7.00 O'clock in the evening of 16.8.1998 when she was in her house kerosene was poured on her body by Rohini and she was lit up by Sanjay. Exh.24

is at page 89 and here the victim has given all the details of the quarrel between her and her husband, the torture meted out to her and what transpired in the evening of 16.8.1998. The following improvements exist in the second dying declaration:

i) History of illicit relationship between the two accused persons not stated in the earlier statement;

ii) Earlier ill treatment is not stated in Exh.21;

iii) There is no mention of the children playing in the court-yard in Exh.21;

iv) There is no mention of the accused having beaten the victim with stone in Exh.21;

v) There is no mention about Rohini stating that the victim is of no use and should therefore be killed in Exh.21;

vi) There is no mention of the husband Sanjay closing the door of the room after the victim caught fire in Exh.21;

vii) There is no mention that the victim was taken to the hospital by Sanjay in Exh.21.

In our opinion the improvements are very material and are calculated to rope in both the accused persons in the matter of burning the victim. Since both the dying declarations are certified by the medical officer it becomes extremely difficult to accept the second one as the improvements as noted above exist in it. There is no explanation as to why the second dying declaration was recorded. It will be seen that both the exhibits have the endorsement of the doctors and it is stated that the condition of the victim was very poor.

Except that dying declaration therefore there is no evidence to connect the accused to the burning. Both the dying declarations create grave doubt in the minds of a reasonable prudent man as to what exactly transpired and why the two dying declarations were recorded. In such state of affairs it is not legally permissible to accept the dying declaration without due corroboration from other circumstantial evidence. The victim as also the accused were residing in locality where several other persons lived. None of them have been examined. Amongst the only two persons examined is the mother of victim and the mother's friend. In the absence of any corroborative evidence it may not in the circumstances be possible to sustain the order of conviction. In the result therefore the appeals succeed. The order of conviction and sentence passed against the appellants-accused is set aside. The appellants-accused be set at liberty if not otherwise required.